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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 43585 |
| |) | |
| v. |) | TWIN FALLS COUNTY |
| |) | NO. CR 2007-2499 |
| LARRY A. CRAWFORD, |) | |
| |) | APPELLANT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Larry A. Crawford was convicted of felony lewd conduct with a minor under sixteen and sentenced to a unified sentence of twenty-five years, with eight years fixed. Mr. Crawford later filed, *pro se*, an Idaho Criminal Rule 35(a) ("Rule 35(a)") motion to correct an illegal sentence, but the district court did not address the motion. Mr. Crawford subsequently filed, *pro se*, a second Rule 35(a) motion, which the district court denied. On appeal, Mr. Crawford asserts the district court erred when it denied his second Rule 35(a) motion to correct an illegal sentence.

Statement of the Facts and Course of Proceedings

In Twin Falls County No. CR 2007-2499, Mr. Crawford was convicted of felony lewd conduct with a minor under sixteen and sentenced to a unified sentence of twenty-five years, with eight years fixed. (See R., pp.22, 40.) Mr. Crawford filed an Idaho Criminal Rule 35(b) motion for leniency, which the district court denied. (See R., pp.40-41.) On appeal, the Idaho Court of Appeals affirmed the decisions of the district court. (See R., pp.40-41.)

Meanwhile, Mr. Crawford filed, *pro se*, a Rule 35(a) motion for correction of an illegal sentence. (See R., p.41.) In the Rule 35(a) motion, Mr. Crawford asserted his sentence was illegal because he was coerced into pleading guilty and the district court later refused to allow him to withdraw that plea. (See R., p.41 n.1.) The Rule 35(a) motion was not noticed for a hearing, and the district court did not address it. (See R., p.41 & n.1.)

Several years later, Mr. Crawford filed, *pro se*, another Rule 35(a) motion for correction of an illegal sentence. (R., pp.22-24; see R., p.41.) In the accompanying brief in support of the second Rule 35(a) motion, Mr. Crawford asserted his sentence was illegal because he felt coerced by his attorney into pleading guilty and the district court denied his motion to withdraw the guilty plea even though he had a guaranteed due process right to withdraw the plea. (See R., pp.26-39.) Mr. Crawford also filed a motion for a hearing on the second Rule 35(a) motion and a motion for the appointment of counsel. (R., pp.16-21.)

The district court then issued an Order Denying Rule 35 Motion Without a Hearing. (R., pp.40-45.) The district court explained its order denying the second Rule

35(a) motion would also act as a denial of the first Rule 35(a) motion. (R., p.41 n.1.) The district court found it had jurisdiction to address the second Rule 35(a) motion, but also noted Rule 35(a) relief “is limited to the correction of sentences that are ‘illegal from the face of the record.’” (See R., pp.41-42 (quoting I.C.R. 35(a)).) The district court observed that Rule 35(a) motions are not designed to reexamine the facts underlying the case to determine whether a sentence is illegal, sentences illegal from the face of the record do not involve significant questions of fact or an evidentiary hearing, and allegations attacking the validity of a defendant’s underlying conviction are beyond the scope of Rule 35(a). (R., pp.42-43 (citing *State v. McKinney*, 153 Idaho 837 (2013); *State v. Clements*, 148 Idaho 82, 86 (2009); *Housely v. State*, 119 Idaho 885, 889 (Ct. App. 1991).)

The district court determined that, “[d]espite the fact that his motion alleges an ‘illegal sentence,’ Crawford’s claim seeks instead to attack the validity of his underlying conviction. Addressing his claim would necessarily involve significant questions of fact surrounding his plea and the court’s decision to deny its withdrawal.” (R., p.42.) Thus, the district court denied the second Rule 35(a) motion because Rule 35(a) was not the appropriate vehicle for Mr. Crawford’s claim. (R., p.43.) The district court also denied Mr. Crawford’s request for the appointment of counsel, finding the second Rule 35(a) motion was frivolous and without merit. (R., p.43.)

Mr. Crawford filed, *pro se*, a Notice of Appeal timely from the district court’s order denying the second Rule 35(a) motion. (R., pp.57-60.)

ISSUE

Did the district court err when it denied Mr. Crawford's second Idaho Criminal Rule 35(a) motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Crawford's Second Idaho Criminal Rule 35(a) Motion To Correct An Illegal Sentence

A. Introduction

Mr. Crawford asserts the district court erred when it denied his second Rule 35(a) motion to correct an illegal sentence.

Generally, whether a sentence is illegal or was imposed in an illegal fashion is a question of law, over which an appellate court exercises free review. *State v. Clements*, 148 Idaho 82, 84 (2009). Under Idaho Criminal Rule 35, a district court "may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). The Idaho Supreme Court has held "the term 'illegal sentence' under Rule 35 is narrowly interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing." *Clements*, 148 Idaho at 86. More recently, the Idaho Supreme Court has clarified that "Rule 35's purpose is to allow courts to correct illegal sentences, *not* to reexamine errors occurring at trial or before the imposition of the sentence." *State v. Wolfe*, 158 Idaho 55, 65 (2015) (emphasis in original).

Idaho Criminal Rule 33(c) governs motions to withdraw a guilty plea. "The decision to grant a motion to withdraw a guilty plea is left to the sound discretion of the district court, and such discretion should be liberally applied." *State v. Arthur*, 145 Idaho 219, 222 (2008). Appellate review of the denial of a motion to withdraw a guilty plea "is

limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action.” *Id.*

“[W]hen the motion is made before sentencing, a defendant need only show a ‘just reason’ to withdraw the plea.” *Id.* (quoting I.C.R. 33(c); *State v. Ballard*, 114 Idaho 799, 801 (1988)). A motion to withdraw plea will be denied if the State can show resulting prejudice from the withdrawal. *Dunlap v. State*, 141 Idaho 50, 61 (2004). But even if granting the motion would not prejudice the State, a motion to withdraw a plea may be denied if the defendant has not presented and supported a “plausible reason for withdrawal of the plea.” *State v. Akin*, 139 Idaho 160, 162 (Ct. App. 2003).

A defendant shows a just reason to withdraw a guilty plea if the plea was involuntary. See *State v. Hanslovan*, 147 Idaho 530, 535-36 (Ct. App. 2008). “A threshold question is whether the plea of guilty was knowingly, intelligently and voluntarily made.” *State v. Rodriguez*, 118 Idaho 957, 959 (Ct. App. 1990). Relief must be granted if the plea is legally defective. *Id.* In other words, “[i]f a plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be made voluntarily, knowingly, and intelligently, then . . . ‘just reason’ will be established as a matter of law.” *State v. Stone*, 147 Idaho 330, 333 (Ct. App. 2009). “However, a constitutional defect in the plea is not necessary in order to show . . . a ‘just reason.’” *Id.* If the appellate court on review determines that the plea was knowingly, intelligently, and voluntarily made, it then proceeds to determine whether any other “just reason” exists for withdrawal of the plea. *Rodriguez*, 118 Idaho at 959.

A court determines whether a guilty plea is entered voluntarily and knowingly through a three-part inquiry involving:

(1) whether the defendant's plea was voluntary in the sense that he understood the nature of the charges and was not coerced; (2) whether the defendant knowingly and intelligently waived his rights to a jury trial, to confront his accusers, and to refrain from incriminating himself; and (3) whether the defendant understood the consequences of pleading guilty.

State v. Dopp, 124 Idaho 481, 484 (1993). "On appeal, Idaho law requires that voluntariness of the guilty plea and waiver must be reasonably inferred from the record as a whole." *Id.*

Mindful of the above authorities on the scope of Rule 35(a) and appellate review of motions to withdraw a guilty plea, Mr. Crawford asserts the district court erred when it denied his second Rule 35(a) motion. As Mr. Crawford argued in support of the second Rule 35(a) motion, he felt coerced by his attorney to enter a guilty plea and filed a timely motion to withdraw the plea. (See R., p.26.) The district court denied Mr. Crawford's motion to withdraw the guilty plea. (See R., p.26.) But "withdraw[al] of the plea of guilty" is a "fundamental guaranteed right of due process," and "Mr. Crawford invoked this right of guaranteed process to enjoy the withdraw[al] of the guilty plea within the requirement of the laws." (See R., pp.27, 29.) The district court's order denying the motion to withdraw the guilty plea "depriv[ed] Mr. Crawford of his inherent right of process to withdraw the plea of guilty." (See R., p.33.) Thus, the sentence was illegal (see R., pp.26, 38), and the district court erred when it denied Mr. Crawford's second Rule 35(a) motion.

CONCLUSION

For the above reasons, Mr. Crawford respectfully requests this Court reverse the district court's denial of his second Rule 35(a) motion to correct an illegal sentence and remand the case to the district court for further proceedings.

DATED this 15th day of January, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of January, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

LARRY A CRAWFORD
INMATE #86971
ISCC
PO BOX 70010
BOISE ID 83707

G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas